

KERALA HIGH COURT

City Corporation of Trivandrum

Vs

A. Antony, Secretary Milk

(T P. Govinda C.J. P.G. Menon J.)

19.01.1962

JUDGMEN

(P G Menon, J.)

1. This is an appeal by the City Corporation of Trivandrum against the order of the Corporation First Class Magistrate, Trivandrum acquitting respondents 1 and 2 of the offence under Section 17 (I) read with Section 7 of the Prevention of Food Adulteration Act - Act 37 of 1954.

2. On 29-1-60 the 2nd respondent brought for sale buffalo milk at the Puthenchantha Co-operative Milk Supplies Union. Pw, 1 the Food Inspector of the Corporation purchased 24 Oz., of milk, after informing him that it was for sampling. Ex. P-i is the voucher for the purchase. It was duly sampled and one part of the sample was sent to the Public Analyst. His report Ex. P-4 showed that the sample contained not less than 7 per cent of added water. On the basis of this report the 2nd respondent who had actually sold the milk and the 1st respondent who is the Secretary of the Peyad Milk Co-operative Society who had sent the milk for sale were prosecuted.

3. Section 7 prohibits the sale of any adulterated food. Section 2 (1) defines the word "adulterated" and it says that an article of food shall be deemed to be adulterated if it satisfies one or the other of the conditions prescribed in Sub-clauses (a) to (1). According to Sub-clause (1) an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability. Section 2 (xii) declares that 'prescribed' means prescribed by rules made under the Act. In exercise of the powers conferred by subsection (2) of Section 4 and Sub-section (1) of Section 23 of the Act, the Central Government has made rules prescribing, inter alia, the standards of quality of different articles of food. Rule 5 of the Prevention of Food Adulteration Rules, 1955 lays down that standards of quality of various articles of food specified in Appendix B to the Rules are as defined in that appendix. Appendix B prescribes among others the standards of quality for cow's milk and buffalo milk. Rule A.II.01.02 of Appendix B lays down that buffalo milk shall contain not less than 5.0 per cent of milk fat and milk solids other than milk fat shall be not less than 9 per cent. If the quality or purity of butter falls below the standards prescribed by the said rules or its constituents are in excess of the prescribed limits of variability, it could be taken as adulterated within the meaning of Section 2 of the Act.

4. In this case the Analyst's report shows that the milk which was seized and analysed has conformed to the standards fixed in Appendix B to the Rules. But that alone is not sufficient. By Sub-cause (m) of Section 23 (1) the Central Government is empowered to make rules for prohibiting or regulating addition of any water to any article of food and the sale of any article of food to which such addition has been made. Rule 44 of the Rules provides that no person shall sell milk which contains any added water. The case for the prosecution is that even though the milk conforms to the prescribed standard the report of the Analyst showed that the sample contained not less than 7 per cent of added water and therefore the respondents are guilty of the offence charged as they have sold milk with added water in contravention of Rule 44 of the Prevention of Food Adulteration Rules.

5. The only evidence that was placed before the Court other than the formal evidence of purchase and sampling is the certificate of the Public Analyst and the question for decision is whether on that report alone it could be found that water had been added and that the accused is guilty of the offence charged. The certificate Ex. P-4 is in these words:

XX XX XX X

I further certify that I have analysed the aforementioned sample, and declare the result of my analysis to be as follows:

Solids-non-fat ... 9.0 per cent.

Fat. 5.4 per cent.

Freezing-point (Hortvet's ...
method). ... 0.49°C

and am of the opinion that the said sample contains not less than seven per cent (7 per cent) of added water as calculated from the freezing point (Hortvet's method) and is therefore adulterated.

6. It is contended that this certificate is sufficient to prove that water has been added and reliance is placed on Section 13 (5) of the Act. Section 13(5) says: Any document purporting to be a report signed by a Public Analyst, unless it has been superseded under Sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Code (Act XLV of 1860)". Thus it only says it may be used as evidence in any enquiry, trial or other proceedings, but says nothing as to the weight to be attached to the report. The word used is 'may' and not 'shall'.

7. The certificate of the Analyst should contain the factual data which the analysis should reveal and not merely the opinion of the Public Analyst as to what that data indicates about the nature of the article of food. Otherwise if such opinion were to be held to be conclusive evidence about the nature of the article of food the merit of the case against the accused would really be decided by the Public Analyst and not by the Court and the Court just gives its authority to the conclusion of the Public Analyst and this cannot be the position in law.

8. The opinion of an expert by itself, may be relevant but would carry little weight with a Court unless it is supported by a clear statement of what he noticed and on what he based his opinion. The expert should, if he expects his opinion to be accepted, put before the Court all the materials which induced him to come to his conclusion, so that the Court although not an expert, may form its own judgment on those materials. His report should be full and complete and take the

place of evidence which he would give if he had been called to Court 'as a witness. He must state the grounds of the opinion which he gives. The mere mention that certain tests were applied and certain results were obtained might be relevant as a piece of evidence, but would not be conclusive.

9. Where, as in this case the sample of milk has conformed to the standard, but the question, is whether the milk is adulterated with water and the whole case depends on the report of the Public Analyst the prosecution ought to have called him as a witness and his. evidence as to how he came to the conclusion that water was added, must have been placed before the Court so that the Court may form its own conclusions about the opinion of the Analyst.

10. In *Gammack v. Jackson Wyness Ltd*¹. the only evidence that was placed before the Court was an analyst's certificate, which was in these words: I certify that I received on March 5, 1943, from you a sample submitted as a sample of non-brewed vinegar for analysis, which was marked No. 178. I further certify that I have analysed it and, as a result of my analysis I am of opinion that the constituents of the sample included the following substances in proportions as under: acetic acid 3.54 per cent. I am of the opinion that this sample is 11.5 per cent, deficient in acetic acid. The question was whether the Magistrate was not bound to accept the certificate as conclusive to prove that the vinegar was not of the quality demanded. Lord Goddard, C.J., observed: Where an analyst's certificate is to be put in evidence the analyst should state enough to enable, not only the Court, but also the defendant, to see exactly what is the offence - exactly why he is said to have sold an article to the prejudice of the purchaser. It was said, as long ago as 1905, by Lord Alverstone, C.J. in *Bayley v. Cook*² The certificate must show that the sample of milk has been compared with some standard.' Unless it can be shown what the standard is, one cannot say that an article is deficient. There must be a standard, some yard-stick, in order to show whether there is a deficiency.

11. In this case the Court is not told what the Hortvet's test is, what is the freezing point of pure milk and how the calculation has been made to find out whether water has been added. I cannot, therefore, say that the Magistrate was bound to be satisfied on a certificate of this kind, which contains only a reference to some test and a finding that water has been added. The prosecution could have examined the Analyst as a witness on their side. The learned Magistrate also could very well have summoned and examined the Public Analyst, but whatever that might be, I am not prepared, to say that the finding of the Magistrate that the case has not been satisfactorily proved is one which could not reasonably have been reached by the Learned Magistrate and that the acquittal is wrong and calls for interference. There are no substantial or compelling reasons to set aside the order of acquittal. The appeal is dismissed.

Cases Referred.

1(1948) 2 AH ER 1056

2(1905) 92 LT.170